JUL 1 1974
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DOCKET NO. 73-1961

GONZALO FERNOS LOPEZ
Petitioner

vs.

THE SUPREME COURT OF PUERTO RICO

and

THE HON. LUIS V. CASTRO RIVERA, Judge-at-large acting for the SUPERIOR COURT OF SAN JUAN, P.R.
Respondents

* *

ADVANCED PETITION FOR

WRIT OF CERTIORARI

and

APPLICATION FOR AN EXTENSION OF TIME TO FILE FINAL PETITION

* *

Gonzalo Fernós López
On his own representation
503 Barbé Street
Santurce, Puerto Rico 00912
Telephone : 722-2832

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-: PLEADING :-

TO THE HONORABLE COURT :

NOW COMES the Petitioner, Gonzalo Fernós López, represented by himself in his own right, and respectfully prays:

-: JURISDICTION :-

WHEREAS ; The Supreme Court of Puerto Rico and the Court a quo have decided this case in a way not in accord with applicable decisions of this Court.

WHEREAS ; Said appellee courts, while deciding this case, departed from the accepted and usual course of judicial proceedings, particularly violative of Civil Rights and the Rules of Civil Procedure.

WHEREAS ; The Supreme Court of the United States has statutory jurisdiction on the Supreme Court of Puerto Rico whose determinations are by law reviewable on writ of certiorari.

WHEREAS ; The Appellee Courts violated the constitutional rights of the Petitioner set forth in the 5th and 14th Amendments of the U.S. Constitution guaranteeing the Due Process and Equal Protection of the Law.

THEREFORE : Be it resolved that the Supreme Court of the United States in a sound interpretation of judicial discretion * may accept to review the decisions stated forth in Appendixes A, B, and C, subject to passing judgment on the Averments stated below and subsequently expanded as deemed appropriate.

* The term is used in a context agreeable to the legal meaning found in the Am. Jur., the English Law, and

-:AVERMENTS :-

1. The undersigned Petitioner, Gonzalo Fernós López, prays the Honrable Court of the United States for writ of Certiorari to review the Judgment of Inhibition pronounced and later revoked by the Hon. Luis V. Castro Rivera, Judge-at-large on behalf of the Superior Court of San Juan, Puerto Rico, entered on the 12th day of April, 1974. The recusation was pleaded by the undersigned Petitioner to prevent the Hon. Modesto Velázquez Flores, Judge of the Superior Court of San Juan, from hearing two libel suits against said Petitioner, who claims personal prejudice by the recused judge. The two libel suits, amounting $390,000, were filed at the Superior Court of San Juan with the numbers 73-3179, 73-3180; consolidated through joinder of parties at the request of this Petitioner. The Plaintiff for the latter case, Arturo Negrón García, is currently the President of the Bar Association of Puerto Rico. Said Plaintiff is very influential professionally and politically. This circumstance compels the Petitioner, as Defendant in the above suits, to represent himself in the Court proceedings and to be unusually zealous and watchful of the course of develop-

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any law dictionary. See also Kenneth C. Davis' book Discretionary Justice; conversely, in our judicature the term is generally tantamount to "divine right of kings". The Supreme Court of Puerto Rico typified the aforesaid assertion in these words : " One has to presume that the courts are acting fairly, even if they don't explicitly state the reasons for their actions... Our faith in justice would crumble if the moment arrived when the courts were obliged to prove that they acted correctly, with a sense of responsibility and in accordance with the law." (Excerpts from opinion emitted by Assoc. Justice, the Hon. Irizarry Yunqué, on 20 Feb.74, case 0-73-123)

ment of the proceedings, and the extrajudicial events surrounding the case.

2. On the 9th day of May, 1974, the Petitioner filed for writ of Certiorari before the Supreme Court of Puerto Rico to seek review of the aforesaid Revocation on the grounds that the Lower Court erred to revoke itself without complying with Due Process of Law when denying the Movant of the Recusation the right to present his case, and without sustaining the Resolution of Revocation on points of fact and law, being such act violative of the substantial rights of the Petitioner and of the Rules of Civil Procedure, as alleged furtheron in this Petition. On the 23rd day of May, 1974, the Supreme Court of Puerto Rico refused to grant the writ of Certiorari and such refusal was entered on the 28th day of May, 1974, devoid of any reason to justify the Resolution (See Appendix B).

3. On the 30th day of May, 1974, the Petitioner filed a Motion with the Supreme Court of Puerto Rico requesting he be given reasons of fact and law explaining why the Court refused to review the Resolution of Revocation of the Lower Court, and be granted 30 days extension of time thereafter to file a Motion of Reconsideration, which in our local jurisdiction must be filed within 15 days of entry of the decision. It was precisely at the expiration of the statutory 15 day time limit that the Supreme Court of Puerto Rico by Resolution dated on the 12th day of June, 1974, entered the 13th day of June, 1974 (see Appendix C), denied either to give any reason for their action, or to grant any time to file Motion of Reconsideration, thus depriving the Petitioner of due process of law.

4. The party who submitted to the Lower Court the Motion of Reconsideration which said Court used to support the revocation of the Order of Inhibition is a joinder co-defendant brought into this case by the Petitioner. Said party's voluntary defense on behalf of the recused judge

raises many questions about the motivation behind the action and was in and of itself a ground for granting the inhibition of the Hon. Modesto Velázquez Flores.

5. The appellee Supreme Court chose not to consider the fact that when the Lower Court revoked itself on its own Resolution in Open Court granting the requested inhibition of the recused judge, it did so without sustaining the reversal on points of fact and law, but justified its Revocation on a news item reporting the inhibition hearings published in a local newspaper. The trial court claimed that the news item "seems to give the wrong impression ..." (See Appendix A). Incidentally, the Judge-at-large, the Hon. Luis V. Castro Rivera, has been sent to the mainland U.S. to take an intensive 3 weeks preparatory course for judges. In the mean time, the substantial rights of the Petitioner have been impaired by the referred judge's action.

6. The most incredible fact surrounding this case is that the Supreme Court of Puerto Rico, in refusing to review the judgment of the Lower Court, that is, denying writ of certiorari, implicitly condoned the illegal action of the Lower Court which is violative of our Rule 47 of Civil Procedure that states as follows :

> " The party aggrieved by the judgment or order may, within 15 days after the filing of copy of notice of the order entered, file a motion for reconsideration of the judgment or order. The court, within 5 days after the filing of such motion, shall deny the same outright or set a hearing to hear the the parties..." (See Proceedings after Judgment, T.32 App.II R47, p.221, Vol. 9, Laws of Puerto Rico Annotated, Equity Publishing Corp. Orford, N.H.

The foregoing Rule constrains the court ruling to be resolved in only two ways : (1) to deny outright the Motion

of Reconsideration, or; (2) to set a hearing to hear the parties. Neither Rule 47 nor any other Rule in the entire Judiciary Act of Puerto Rico provides for the preposterous alternative acted upon by the appellee Court. That is, to reverse a judgment without a hearing. Furthermore, the Lower Court never gave the Petitioner the opportunity to fully present his recusation. And finally, the party who filed the Motion of Reconsideration requesting the revocation of the inhibition was obviously not the party aggrieved by the judgment, since said intervening party could only be aggrieved if it had been involved in a collusion with the recused judge. One way or the other, this party's irrelevant intrusion to the controversy about the recusation is in and of itself a questionable action which raises serious doubts about the legitimacy of the intentions of said party. Likewise, it invalidates the intervention and thus nullifies the reversal of the Lower Court. In other words, the appellee Courts thwarted the entire concept of Due Process.

7. The Petitioner believes that the disillusionment that pervades our trial lawyers springs mainly from the ills that afflict the Judicature of Puerto Rico, a great deal of them stemming from the frustrating fact that the Supreme Court of Puerto Rico arbitrarily disposes of a substantial number of cases. For example : 52% of the cases resolved during the fiscal year 1972-73 (535 out of 1,019) were denied without any explanation whatsoever. The above quoted number of cases represents 70% civil and 30% criminal. The Supreme Court's modus-operandi in reference is made possible to a large extent through the self-serving rule codified as Rule 15.1 of the Supreme Court of Puerto Rico, T.4, App. I, p.678, et seq. Laws of Puerto Rico Annotated. Under Clause (a) of said Rule, the Court reserves the unlimited right to grant or deny writ of review on final judgment of the Superior Court, trial de novo, review by certiorari, etc., to be issued solely on its own unfettered discretion without having been established in any rule the limiting criteria and/or circumstances on which to base the applicability of discretion nor to be compelled to give any reason for its judgment, even though it is often requested.

Contrary to the Federal Rules of Civil Procedure and the National Supreme Court Rules, ours are so construed as to permit that even when the controversy entails a substantial constitutional violation, the Court, without any explanation, may refuse to review the Lower Court judgment or decree. On the other hand, the Lower Court, aware of this lax situation, often acts casually as in the present case, thus, disregards compliance with the Due Process of Law. In light of the aforesaid assertions, the Petitioner considers this case adequate for requesting a judgment on the constitutionality of the controversial Rule 15.1, supra.

8. When the respondent Judge-at-large, acting on behalf of the Superior Court of San Juan, granted the inhibition of Judge Hon. Modesto Velázquez Flores, he stated in his Resolution dictated in Open Court that the Supreme Court would have agreed that the recused judge could not possibly see the case impartially. Said respondent Judge, when revoking his previous order of inhibition, evaded to make reference to his above-stated view and to explain the turn-about to his previous opinion. The Petitioner invokes this fact as very relevant and decisive to be considered in the final decision of the Supreme Court of the United States.

9. On the 14th day of May, 1974, the Petitioner requested the transcription of the Resolution of Inhibition ordered in Open Court. On the 30th day of May, 1974, the Petitioner requested a preferential order for transcribing the aforesaid Resolution. Said request was granted on the 7th day of June, 1974, however, the court stenotypist of this case went on vacation before the preferential transcription was effected and will not be back until the middle of July. Said transcription is indispensable to sustain the Petition before this Court.

10. Enclosed herewith my personal check no. 257 from The Chase Manhattan Bank, Branch of Santurce, Puerto Rico, dated 26 June, 1974, in the amount of $ 100.00 for the filing fee of this case.

WHEREFORE, the Petitioner respectfully prays the Honorable Court to accept its jurisdiction in this case and to grant an extension of time of 45 days, or at its discretion, to submit a supported statement or brief as it deems necessary to pursue this Petition for Writ of Certiorari.

San Juan, Puerto Rico, this 26th day of June, 1974.

Gonzalo Fernós López
The Petitioner, on his
own representation

503 Barbé Street
Santurce, Puerto Rico
00912

-: ADDENDA :-

The former Chief Justice of the Supreme Court of the United States, the Honorable Earl Warren, once said : " The rules of court are the most important tools of the courtroom lawyer." It is precisely the indiscriminate application of our Rules of Civil Procedure by the appellee Courts and the unrestrained use of discretion permissible in the Rules of the Supreme Court of Puerto Rico which make way for the ills afflicting our Judicature, and subsequently cause this Petiton to be raised.

IT IS JUSTICE THAT I AM ASKING.

PROOF OF SERVICE

I, Gonzalo Fernós López, the undersigned Petitioner, represented by himself in his own right, hereby certify that on the 26th day of June, 1974, I served copy of the foregoing ADVANCED PETITION FOR WRIT OF CERTIORARI and APPLICATION for an EXTENSION of TIME to FILE FINAL PETITION to the Supreme Court of the United States on the several parties and intervenors as follows :

1. The Supreme Court of Puerto Rico, by leaving a copy thereof at the office of the Secretary of said Court, at the Supreme Court Building, San Juan, Puerto Rico.

2. The Hon. Luis V. Castro Rivera, Judge-at-large acting for the Superior Court of San Juan, Puerto Rico by leaving a copy thereof at the office of the Court's Secretary, Superior Court Building, San Juan, P.R.

3. The Hon. Hernán R. Pesquera, U.S. District Court Judge, Post Office Building, San Juan, Puerto Rico, by leaving a copy thereof with his secretary.

4. The Counsel for the Plaintiffs, Lcdo. Plinio Perez Marrero, Attorney for José Ramón Ortíz, et al. and Arturo Negrón García, et al., by mailing a copy thereof in duly addressed envelope, with first class prepaid postage to his address as follows: P.O. Box 2195, Hato Rey, Puerto Rico 00919.

5. The Counsel for one of the Co-Defendants, Lcdo. Miguel J. Ríos Lugo, Legal Advisor and Attorney for Colegio de Ingenieros, Arquitectos y Agrimensores de Puerto Rico (CIAA), by mailing a copy in duly addressed envelope, with first class prepaid postage to his address as follows: G.P.O. Box 2167, San Juan, P.R. 00936.

PROOF OF SERVICE (Continuation)

6. The Administrative Judge for the Superior Court of San Juan, Puerto Rico, by leaving a copy thereof at the Secretariat's Office, Superior Court Building, San Juan, Puerto Rico.

7. The Counsel for one of the Co-Defendants, Lcdo. José F. Quetglas Alvarez, Attorney for Antonio Luis Ferré and El Día, Inc., by mailing a copy in duly addressed envelope, with first class prepaid postage to his address as follows: G.P.O. Box 3565, San Juan, Puerto Rico 00936.

8. The Counsel for one of the Co-Defendants, Lcdo. Jaime Sifre Rodriguez, Attorney for Banco Mercantil de Puerto Rico, by mailing a copy in duly addressed envelope, with first class prepaid postage to his address as follows: G.P.O. Box 3073, San Juan, Puerto Rico 00936.

San Juan, Puerto Rico, this 26th day of June, 1974.

Gonzalo Fernós López
503 Barbé Street
Santurce, Puerto Rico 00912

APPENDIX A

IN THE SUPERIOR COURT OF PUERTO RICO
COURTROOM OF SAN JUAN

José Ramón Ortiz, et al.	°	Civil No. 73-3179
Arturo Negrón García, et al.	°	73-3180
Plaintiffs	°	
	°	
vs.	°	
	°	
Gonzalo Fernós López	°	On :
Defendant and Third	°	
Party Plaintiff	°	
	°	
vs.	°	
	°	
Rafael López Vega, President,	°	Harm and Injury
Colegio de Ingenieros, Arqui-	°	for Difamation
tectos y Agrimensores de P.R.	°	
(CIAA), et al.	°	
Co-Defendants	°	
	°	
° ° ° ° ° ° ° ° ° ° ° °		

AMENDED RESOLUTION

We have been asked to reconsider the resolution dictated in open court on the 29th day of March, 1974, and the defendant, who appears pro se, opposes the reconsideration.

The movant of the motion of inhibition of the judge Modesto Velázquez Flores, aiming to prove that said judge was prejudiced against said movant, Mr. Fernós, in the case in reference, offered proof. As part of the proof, the movant brought as witness the judge Modesto Velázquez Flores himself, who emphatically denied having any prejudice whatsoever against said movant.

The movant, person unknowledgeable of the law and procedure and who had been admonished previously by the Court for his gross and disrespectful conduct, remained obliged with the testimony of his own witness. Neither did he succeed then, nor could he succeed in proving his allegations in his motion with respect to the alleged partiality of the judge Modesto Velázquez Flores and was not warranted, therefore, the inhibition of the judge Modesto Velázquez Flores.

Neither Mr. Fernós nor any attorney can arbitrarily decide that he does not wish for a certain magistrate to be the one to judge a specific case. The case file does not contain the slightest indication of evidence that demostrates that the judge Modesto Velázquez Flores is prejudiced in this matter. Rivera v. Court, 1950. 71 D.P.R. 953.

The motion of inhibition in paragraphs 5, 6, and 7 contains, however, excesively injurious language directed to the moral integrity of judge Modesto Velázquez Flores. Proof has not been offered to those ends and the Court had ordered that that part of the motion be referred to the Office of the District Attorney for any criminal action which to his judgment might proceed.

An unjustified imputation consciously formulated by an experienced attorney of professional abilities accusing a judge of immoral and delictive conduct, constitutes sufficient cause to discipline said attorney, in conformity with the statutes and the Code of Professional Ethics. Cf: In re Andreu Ribas, 1959, 81 D.P.R. 90. An attorney should not make any accusation of dishonesty to the judge who presides over a court if he is not certain or has a clear and sure knowledge with respect to the imputation, nor probable cause or any ground to believe in the truth of same. When he acts in such a way, he violates his duties that as an attorney he has to said court and judge.

In this case, Mr. Fernós is not an attorney and persists in his wish to represent himself. In doing so, he has to respect the Code of Professional Ethics and observe a respectful conduct toward the judge and toward the other attorneys. On the other hand, the judges, who are not always free to defend themselves, have preferential right to be defended by the attorneys against attacks and unjust criticisms. From there, it should not be improper the request of Attorney Quetglas which this Court is considering. And such a praiseworthy act of Attorney Quetglas should not have been the object of improper and coarse language used by Mr. Fernós.

Facing this described situation and as a measure to dissipate, not only the alleged prejudice which the movant had not proven, but the appearance of prejudice, this Court had resolved that judge Modesto Velázquez Flores be inhibited. Accordingly, it was dictated in open court. Cf: In re Gonzalez Blanes, 1945, 65 D.P.R. 381. The Resolution given in open court, however, seems to give the impression that Mr. Fernós had succeeded in proving his imputations against judge Modesto Velázquez Flores. Nothing farther from the truth.

This was not the result that this Court had in mind when it dictated the Resolution in Open Court. It cannot reward indirectly he who did not succeed in sustaining his allegations by means of proof.

THEREFORE, the Resolution dictated in Open Court is annulled and instead the present one is dictated denying the Motion of Inhibition.

Be it notified.

Given in San Juan, Puerto Rico, this 11th day of April, 1974.

(signed) Luis V. Castro Rivera
Superior Judge

(Translated from original in Spanish)

APPENDIX B

IN THE SUPREME COURT OF PUERTO RICO

Gonzalo Fernós López, 0-74-190
Petitioner,

v. Certiorari

Superior Court of San Juan,
Hon. Luis V. Castro, Judge,
Defendant.

Court constituted by its Chairman, Associated Justice Mr. Dávila and the Associated Justices Mr. Torres Rigual, Mr. Martín and Mr. Cadilla Ginorio

RESOLUTION

San Juan, Puerto Rico, this 23rd day of May, 1974.

To the request for writ of certiorari, denied.

It was agreed by the Court and certifies Mr. Secretary.

José L. Carrasquillo
Secretary

(Translated from copy of original in Spanish)

APPENDIX C

IN THE SUPREME COURT OF PUERTO RICO

Gonzalo Fernós López, 0-74-190
Petitioner,

v. Certiorari

Superior Court of San Juan,
Hon. Luis V. Castro, Judge,
Defendant.

Court constituted by its Chief Justice Mr. Trías Monge and the Associated Justices Mr. Torres Rgual and Mr. Irizarry Yunqué

RESOLUTION

To the Motion filed by the Petitioner on the 30th day of May, 1974, denied.

It was agreed by the Court and certifies Mr. Secretary.

José L. Carrasquillo
Secretary

(Translated from copy of original in Spanish)

COMMENTARY ON THE AMENDED RESOLUTION REVOKING THE DECREED INHIBITION

When the respondent judge-at-large, the Hon. Luis V. Castro Rivera, decreed the inhibition of the Hon. Modesto Velázquez Flores, the news media report on the matter raised hard feelings among the latter's colleagues who reportedly found the news to reflect an image unbecoming to the dignity of the magistrature. The newspaper article reported that the movant, a layman appearing in court without counsel, made imputations to the recused judge and the presiding judge decided to grant the inhibition.

But this marginal incident, which is certainly no ground for revocation, had nothing to do with the fact that the respondent judge, after interrupting the hearing long before completion, abruptly decided in Open Court to grant the inhibition, supposedly to preserve the purity of judicial proceedings.

The subsequent situation is one series of correlated events where the respondent judge-at-lage finds himself pressed by his colleagues, and to relieve himself of an embarrassing position takes on the Petitioner as a scape-goat by revoking the inhibition. Furthermore, to justify his turn-about he deliberately presents the Petitioner in the so called Amended Resolution as " gross and disrespectful " in his conduct, " unknowledgeable of the law and procedure ", and wastes no occasion to belittle the Petitioner. Law certainly has many facets and complexities even difficult for the expert. The Petitioner, although he believes to have a grasp for sensing justice and injustice more keenly than some people, being a layman, he does not pretend to be sufficiently knowledgeable of the law; but he certainly is a citizen respectful of law and order and of our democratic institutions. And he regrets with no less concern becoming cognizant of the fact that those who are supposed to be standard-bearers of justice could be so easily vulnerable to arbitrariness.

The Petitioner further regrets the impassioned language tinted with falsehood and lack of objectivity present in the " Amended Resolution ", thus, is compelled to clarify as follows :

1. It is entirely false that the Court had admonished the Petitioner at any time. Unwarrant threat and coercion, yes. But there was no justification for admonitions since the Petitioner always conducted himself with decorum and respect for the Court. It is not true that he displayed a coarse and disrespectful conduct.

2. The recused judge was certainly not the Petitioner's witness, but just the recused judge under questioning. Thus, the Petitioner could not remain obliged by the recused judge's laconic and evasive replies to the Petitioner's questions.

3. It is neither partly nor totally true that the recused judge denied either explicitly or tacitly that he was not prejudiced against the movant (Petitioner).

4. The respondent judge-at-large repeatedly coerced the Petitioner's presentation of his case in Open Court ; among other things, he restricted the documental and testimonial evidence to the presentation a very few documents and only 2 of 9 witnesses. Thus, said judge could not rightfully allege that the Petitioner did not succeed in proving his allegations, when he allowed no opportunity for it.

5. The " Amended Resolution " does not contain one single evidence or explanation to sustain the revocation of the inhibition. It only implies that the Court believes the Petitioner should be punished for unexplained motivations and thus should not be rewarded with the sustaining of the inhibition.

Gonzalo Fernós López